

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JAN -8 PM 3:43

JEANIE HICKS, CLERK ✓

BY: V Adams

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

) No. P1300CR20081339

) Division 6

) **REPLY IN SUPPORT IN**
) **DEFENDANT'S MOTION IN**
) **LIMINE TO PRECLUDE THE**
) **TESTIMONY AND REPORT OF**
) **RICHARD ECHOLS AND ALL**
) **TESTIMONY RELEVANT TO**
) **F(12) AGGRAVATOR**

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21 The State's response acknowledges that it is primarily interested in having Mr.
22 Echols speculate as to Mr. DeMocker's motive as opposed to offering testimony
23 regarding Mr. DeMocker's financial condition. This was obvious from the citations
24 provided in the original motion to Mr. Echols' initial testimony and report. This is
25 improper and the Court should prohibit it. Furthermore, Mr. Echols' testimony should
26 be excluded because the State has failed, even after a directive by the Court, to provide
27 counsel with a list of identifiable documents that Mr. Echols' relied upon in his
28 testimony and written report.

1 Mr. Echols is not an expert in motive, he is an accountant. The State offers no
2 rationale for its assertion that an accountant is qualified through training to offer an
3 opinion on motive or the other issues detailed in the original motion *in limine*.¹ This
4 Court has already decided this issue in striking certain opinions from Mr. Echols' report
5 at a hearing on November 19, 2009. (See Minute Entry November 19, 2009). Mr.
6 Echols' opinions about Mr. DeMocker's motivation are also unfounded and extremely
7 prejudicial. His testimony should be prohibited.

8 The Court has struck the (f)(12) aggravator. Testimony about Mr. DeMocker's
9 financial condition is therefore no longer relevant. To the extent it remains relevant, the
10 question of motive is one for the jury and is not the proper subject of expert testimony.
11 Mr. Echols' proposed testimony constitutes inadmissible advice to the trier of fact on
12 how to decide the case. *See State v. Moran*, 151 Ariz. 378, 383, 728 P.2d 248, 253
13 (1986); *see also State v. Montijo*, 160 Ariz. 576, 774 P.2d 1366 (App. 1989).

14 The State's response also seems to suggest that Mr. Echols is a summary witness
15 regarding the financial records. "As these documents number in the thousands, an
16 expert who can assist the trier of fact sort through the mountain of evidence is
17 essential." (State's response at 3.) If that was all Mr. Echols' purported to do, that
18 would be one thing. Under Arizona Rule of Evidence 1006 a summary may be
19 presented. That is clearly not what the State intends with Mr. Echols. If Mr. Echols is
20 permitted to testify, his testimony should be so limited.


21 Both a jury and the court are able to draw conclusions based on the evidence, and
22 Mr. Echols' rank speculation, hyperbole and unsupported legal conclusions are of no
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25 ¹ Examples include Mr. Echols speculation on the following: the effect of the 2007 tax filing on the relationship between Mr.
26 DeMocker and Ms. Kennedy; the "set up" of a confrontation between Mr. DeMocker and Ms. Kennedy, the relationship being
27 "very strained," correspondence was "significant and telling," that Mr. DeMocker committed perjury and would be "found
28 guilty" that "Mr. DeMocker would lose his license to sell securities, and therefore everything he had would be lost, including
his ability to produce the revenue he had been earning," that DeMocker "stands to lose all that he has" and also that the
"resultant consequences are disastrous."

1 assistance to anyone. This Court should grant Mr. DeMocker's motion to preclude the
2 testimony of Mr. Echols.

3 DATED this 8th day of January, 2010.

4 By:


John M. Sears
P.O. Box 4080
Prescott, Arizona 86302

OSBORN MALEDON, P.A.
Larry A. Hammond
Anne M. Chapman
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
Attorneys for Defendant

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11 **ORIGINAL** of the foregoing filed
12 this 8th day of January, 2010, with:

13 Jeanne Hicks
14 Clerk of the Court
15 Yavapai County Superior Court
16 120 S. Cortez
17 Prescott, AZ 86303

18 **COPIES** of the foregoing hand delivered
19 this 8th day of January, 2010, to:

20 The Hon. Thomas B. Lindberg
21 Judge of the Superior Court
22 Division Six
23 120 S. Cortez
24 Prescott, AZ 86303

25 Joseph Butner, Esq.
26 Office of the Yavapai County Attorney
27 Prescott courthouse basket

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